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**IN THE
COURT OF APPEALS OF INDIANA**

HUGH D. BEECH, JR.,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 49A02-0611-PC-981
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William T. Robinette, Master Commissioner
Cause No. 49G03-8703-CF-022215

April 18, 2007

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Hugh D. Beech, Jr., appeals from the denial of his petition for post-conviction relief. Specifically, Beech raises the following arguments: (1) the post-conviction court erred by adopting wholesale the State's proposed findings of fact and conclusions of law; (2) the State's prosecution took place after the applicable statute of limitations had expired; and (3) his guilty plea was not made knowingly, voluntarily, and intelligently. Finding no error, we affirm the judgment of the post-conviction court.

FACTS

On the night of February 11, 1987, Nick Bigsby and James Bank were walking outside in Indianapolis. Suddenly, they were surrounded by a group of men, one of whom walked up to Bigsby and asked, "What are you motherf*ckers doing in this neighborhood?" Guilty Plea Tr. p. 20. Before Bigsby could reply, one of the men hit him on the head and another stabbed him in the chest. Bigsby was subsequently transported to Methodist Hospital, where he remained in intensive care for six days. As a result of this incident, Bigsby lost part of his liver. Eventually, Beech's mother told police officers that she overheard Beech talking about stabbing Bigsby, and Bigsby and Banks both positively identified Beech as the person who stabbed Bigsby.

On March 10, 1987, the State charged Beech with class A felony attempted murder. On July 23, 1987, Beech agreed to plead guilty to the lesser-included offense of class C felony battery, "as covered" by the charging information, in exchange for the State's agreement to drop the attempted murder charge. Appellant's App. p. 138. Originally, the charging information alleged that Beech had attempted to murder Bigsby by "knowingly

stabbing at and against the chest area of Nick Bigsby, by means of a deadly weapon, to wit a knife” Id. at 135.

At the guilty plea sentencing hearing, Bigsby’s attorney became aware that class C felony battery with a deadly weapon was not a crime for which a portion of his client’s sentence could have been suspended. Ind. Code § 35-50-2-2(b). Class C felony battery causing serious bodily injury, however, was eligible for a suspended sentence. Consequently, Bigsby and the State agreed that he would plead guilty to class C felony battery causing serious bodily injury so that a portion of his sentence would be eligible for suspension. Guilty Plea Tr. p. 10-14. To that end, the State amended the charging information to read that Beech had attempted to murder Bigsby by “knowingly stabbing at and against the chest area of Nick Bigsby, by means of a deadly weapon, to wit a knife and resulting in serious bodily injury” Appellant’s App. p. 135 (emphasis added).¹

After being fully advised of his rights, Beech pleaded guilty to class C felony battery resulting in serious bodily injury. On August 24, 1987, the trial court sentenced Beech to eight years of incarceration with three years suspended to probation. Beech subsequently received a number of notices of probation violation but continued on probation until November 6, 1992, when the trial court revoked his probation and ordered the remaining three years of the sentence to be executed.

¹ Because Beech pleaded guilty to the lesser-included offense of class C felony battery “as covered” by the charging information, the State declined to amend the information to include a new charge of battery. Appellant’s App. p. 138. Instead, Beech agreed that the allegations in the information regarding attempted murder included allegations sufficient to “cover” the crime of class C felony battery.

On April 4, 2005, Beech filed a petition for post-conviction relief, and on December 5, 2005, Beech filed an amended petition. The post-conviction court held a bifurcated evidentiary hearing on the amended petition on January 24, 2006, and July 25, 2006. Beech and the State each filed proposed findings of fact and conclusions of law. On August 25, 2006, the post-conviction court adopted wholesale the State's proposed findings and denied Beech's petition. Beech now appeals.

DISCUSSION AND DECISION

As we consider Beech's argument that the post-conviction court improperly denied his petition, we observe that the petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); McCarty v. State, 802 N.E.2d 959, 962 (Ind. Ct. App. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Post-conviction procedures do not afford petitioners with a "super appeal." Richardson v. State, 800 N.E.2d 639, 643 (Ind. Ct. App. 2003). Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based upon grounds enumerated in the post-conviction rules. Id.; see also P-C.R. 1(1).

I. Post-Conviction Court's Findings and Conclusions

Beech first argues that the post-conviction court improperly adopted, verbatim, the State's proposed findings of fact and conclusions of law. Although Beech acknowledges that

this practice is not prohibited, he directs our attention to our Supreme Court’s admonishment that “the wholesale adoption of one party’s findings erodes confidence that they reflect the considered judgment of the post-conviction court.” Stevens v. State, 770 N.E.2d 739, 762 (Ind. 2002). Our Supreme Court has also, however, recognized that there is a valid and practical reason for this practice and has not found such wholesale adoption, on its own, sufficient to conclude that the petitioner was denied a fair post-conviction hearing. Id.

The post-conviction court presided over a two-day hearing and specifically noted that it had read Beech’s “extensive” memorandum in support of his petition. PCR Tr. p. 22. It is evident from the transcript that the post-conviction court considered witness testimony and examined the relevant documents, such as the plea agreement and charging information. Id. at 22-24. Beech bases his argument that the post-conviction court was biased solely on the fact that it adopted the State’s proposed findings; however, as noted above, our Supreme Court has held that this practice, in and of itself, is insufficient to establish that the process was unfair to the petitioner. In the absence of other evidence to the contrary, we find that the post-conviction court acceptably adopted the State’s proposed findings verbatim and that its decision to do so did not deny Beech a fair hearing on his petition for post-conviction relief.

II. Statute of Limitations

Beech next raises an argument based upon the five-year statute of limitations for battery prosecutions. We interpret his argument as follows: essentially, Beech contends that because the State did not file a written information specifically charging him with battery, there was no judgment and conviction for battery until 1992, when his probation was

revoked. Because the offense itself had occurred more than five years prior to November 6, 1992, Beech argues that his “conviction” impermissibly occurred outside of the five-year statute of limitations. Reply Br. p. 6.

Initially, we observe that the statute of limitations for class C felonies requires that prosecution must commence within five years after the commission of the offense. Ind. Code § 35-41-4-2(a)(1). A prosecution commences with the filing of an indictment or information or when the defendant is arrested. I.C. § 35-41-4-2(i). Moreover, “[a] prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.” I.C. § 35-41-4-2(j). Thus, even if the statute of limitations had expired when Beech pleaded guilty—which, as described more fully below, it clearly had not—he would not succeed with this argument.

Statutory waiver aside, the record could not be clearer. The incident itself took place on February 11, 1987. Appellant’s App. p. 135. The State charged Beech with attempted murder on March 10, 1987. Id. On July 23, 1987—less than five months after the incident occurred—Beech pleaded guilty to the lesser-included offense of class C felony battery resulting in serious bodily injury. Id. at 138-39. On August 24, 1987, the trial court sentenced Beech to eight years of incarceration with three years suspended for class C felony battery “as covered” by the then-amended charging information. Id. at 148. The August 24, 1987, abstract of judgment shows that Beech was convicted of class C felony battery. Id. Therefore, all relevant events took place well within the five-year statute of limitations and there is simply no evidence supporting Beech’s contention that there was no battery

conviction in place before November 6, 1992.² Additionally, because Beech pleaded guilty to battery as a lesser-included offense of attempted murder “as covered” by the charging information, the State was not required to file a new information explicitly charging him with battery. Guilty Plea Tr. p. 10-14. Consequently, we find no error on this basis.

III. Voluntariness of the Guilty Plea

Finally, Beech argues that he did not plead guilty knowingly, voluntarily, and intelligently because he was not advised of the nature of the battery offense. A guilty plea entered after the trial court has reviewed the various rights being waived by the defendant and has made the inquiries called for by statute is unlikely to be found wanting in a collateral attack. Cornelious v. State, 846 N.E.2d 354, 357-58 (Ind. Ct. App. 2006), trans. denied. However, defendants who can show that they were coerced or misled into pleading guilty by the judge, prosecutor, or defense counsel will present colorable claims for relief. Id. In assessing the voluntariness of a plea, we review all of the evidence before the post-conviction court, including testimony given at the post-conviction hearing, the transcript of the petitioner’s original sentencing, and any plea agreements or other exhibits that are a part of the record. Id.

Here, the following discussions took place at the guilty plea hearing:

² We also note that there is no support for Beech’s argument that the trial court’s actions in this case amount to an impermissible withheld judgment. Beech pleaded guilty, was convicted, and was sentenced on the lesser-included class C felony battery offense in 1987. He was sentenced to eight years of incarceration with three years suspended to probation. That Beech was unable to conform to the laws of society and violated his probation numerous times, leading to the trial court’s revocation thereof, does not transform Beech’s sentence into a withheld judgment.

THE COURT: Can you read sufficiently that you can understand the terms of the plea agreement that you are offering to plead guilty to, a charge of battery, a covered offense in the charge of attempt[ed] murder, attempt[ed] murder being a Class A Felony, Battery being a Class C Felony? Is that your understanding of the plea?

THE DEFENDANT: Yes, sir.

THE COURT: I'm also required to tell you what the potential penalties are. Battery, as a Class C felony—in this case it's a class C Felony. The presumptive sentence for a Class C Felony in Indiana is five years. "Presumptive" means average or standard. It is at that place that the legislature has told trial courts to begin as the trial court seeks to impose the appropriate penalty. Do you understand that?

THE DEFENDANT: Yes, sir.

[BEECH'S ATTORNEY]: . . . it really didn't make much difference to us whether it was [battery] with a deadly weapon or serious bodily injury, as long as it was a suspendable offense. Is that correct, Mr. Beech?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You understand what the lawyers and I have been talking about, Mr. Beech, is that, according to the statute, or the copy of the statute I have in front of me, battery with a deadly weapon is a non-suspendable offense regardless of a person's prior criminal history; that is, mainly we're talking conviction for a felony. However, battery with serious bodily injury is also a Class C Felony, but is technically a suspendable sentence. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: So the Prosecutor is willing to allow you to plead guilty to battery as covered by the charge, alleging that Nick Bigsby was stabbed with a knife and suffered serious bodily injury. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you want to proceed with this hearing on that basis?

THE DEFENDANT: Yes, sir.

[THE STATE]: . . . At this time, the State would move to amend the information by interlineations to add the words, “which resulted in serious bodily injury to Nick Bigsby,” after the language, “by means of a deadly weapon, to-wit: a knife.” . . . And stipulating that the plea to battery, as a Class C felony, would be based upon serious bodily injury of Nick Bigsby and not the allegation of a deadly weapon.

THE COURT: We’ll show it formalized on the charging information.

[THE STATE]: All right.

THE COURT: Unless you want to—you don’t want to submit a new one, do you?

[THE STATE]: No, Judge. And also, that—I think the defendant should know that all of the penalties that the Court has previously advised the defendant of are still—

[BEECH’S ATTORNEY]: They’re the same.

[THE STATE]: —the same.

THE COURT: Yeah. Class C Felony still has the same penalty. The allegation now, by stipulation and agreement of your lawyer and the Prosecutor, are not different as to what you’re offering to plead to. Okay?

[THE STATE]: There was no response, Judge. I need the record to show he understands.

THE COURT: He shook his head, but—

THE DEFENDANT: Yes, sir.

Guilty Plea Tr. p. 4-15.

Notwithstanding Beech's arguments to the contrary, it is apparent that the trial court and the attorneys carefully explained to Beech that he was pleading guilty to class C felony battery resulting in serious bodily injury as covered by the charging information, that no new charging information explicitly alleging battery would be filed, and that he would be eligible for a suspended sentence because of the State's agreement to amend the charging information to allege serious bodily injury. Id. The trial court also explained the range of possible punishments for a class C felony and explained that the range would be the same whether Beech pleaded guilty to battery with a deadly weapon or battery causing serious bodily injury. Id. Beech indicated to the trial court that he understood all of these advisements and ultimately stipulated to the factual basis for the crime. Id. Based on this evidence, we conclude that the post-conviction court properly found that Beech pleaded guilty knowingly, voluntarily, and intelligently.

The judgment of the post-conviction court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.